

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Committee:		BOARD OF ETHICS		Meeting Date	January 27, 2017
Location	Mo'ikeha Building, Liquor Conference Room 3			Start of Meeting: 1:00 p.m.	End of Meeting: 2:04 p.m.
Present	Chair Mary Tudela; Vice Chair Michael Curtis; Secretary Maureen Tabura. Members: Ryan de la Pena; Calvin Murashige; Brad Nagano; Mia Shiraishi Staff: Deputy County Attorney Matthew Bracken; Department of Liquor Control Secretary Cherisse Zaima; Boards and Commissions Administrator Jay Furfaro				
Excused					
Absent					
SUBJECT	DISCUSSION			ACTION	
Call To Order				Chair Tudela called the meeting to order at 1:00 p.m. with 7 members present.	
Roll Call	Staff conducted a roll call noting all 7 members were present.				
Request for Advisory Opinion	<p>RAO 17-003 Request received 1/20/17 from County Attorney Mauna Kea Trask for an advisory opinion. The County is currently in collective bargaining negotiations with Hawaii Fire Fighters Association (HFFA). HFFA is proposing a revision to Section 47 of their Collective Bargaining Agreement. The Office of the County Attorney requests an advisory opinion from the Board of Ethics on Whether or not such a revision would be allowable under the Code of Ethics.</p> <p>Chair Tudela noted for the record a correction to the item listed, noting that it states the request for advisory opinion was made by County Attorney Mauna Kea Trask; however, the request was actually made by Director of Human Resources, Janine Rapozo.</p> <p>Mr. Jonathan Spiker, counsel for the Hawaii Fire Fighters Association, was present. Mr. Spiker distributed copies of his testimony to the Board, and read his testimony for the record. (On file)</p>				

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Murashige asked if there is any employer in the State of Hawaii that allows a union logo to be on a uniform to which Mr. Spiker replied he is not aware of any other employees that have union logos as part of their uniform in Hawaii.</p> <p>Mr. Murashige asked if there is any Hawaii court case that supports his position to which Mr. Striker stated not that he is aware of; however, he would need to do further research to verify that.</p> <p>Chair Tudela referenced Page 2 of his testimony where he cited the NLRB along with the Public Aviation Corporation, and asked in those particular cases who paid for the logos? Mr. Striker replied that in the California Public Relations Board case, the members or employees either paid part or in-full. Chair Tudela then asked that in the request from HFFA, who will pay for the logo. Mr. Striker explained that in terms of the bargaining agreement they are seeking, the County or the employer would supply the uniforms which would have the union logo already affixed.</p> <p>Mr. Colin Wilson, Hawaii Fire Fighters Association Kauai division Chair was present to provide testimony in support of HFFA's request. Mr. Wilson explained that this proposal goes back to the start of the negotiation process last year, which was to include the HFFA patch on the firefighter uniforms. Upon conducting internet research, Mr. Wilson found the National Labor Relations Act, and referenced Sections 7, and 8 (a)(1), which states it is unfair labor practice for an employer to interfere with restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the act, with specific reference to prohibiting employees from wearing union buttons, t-shirts, and other union insignia unless special circumstances exist. In researching "special circumstances", Mr. Wilson looked into court cases,</p>	

SUBJECT	DISCUSSION	ACTION
	<p>the national labor relations board, and other individual state labor relation boards, and came across a case from 2015 regarding NLRB, and ARJ striking down a button and sticker ban. This case had to do with Pacific Bell telephone company, where the NLRB found that the employer could not lawfully prohibit employees from wearing union buttons and stickers that contained what was argued to be vulgar language such as WTF, FTW, and the word “crap”. Because these were worn by employees who had regular interactions with customers, the employer argued it was offensive and was considered a special circumstance. However, the NLRB as well as the judge determined that the language displayed on the stickers and shirts was not so vulgar and offensive as to cause the employees to lose the protection of the National Labor Relations Act.</p> <p>Mr. Wilson stated there was another case he came across at which point Chair Tudela interjected to direct Mr. Wilson to present information that relates to the State of Hawaii because laws outside of that jurisdiction don’t have any bearing on the question before the Board. Mr. Wilson stated he feels the National Labor Relations Acts includes everyone. Chair Tudela agreed, but pointed out that Mr. Wilson’s original statement was a question of why this issue has come before the Board of Ethics. She explained that the Board has been presented with a very specific set of questions, and will only be deciding whether or not the request from HFFA will be violating any existing laws in the Kauai County Charter, in Section 3 of the County of Kauai Code of Ethics, and in the Rules and Regulations of the County of Kauai Board of Ethics.</p> <p>Mr. Wilson referenced the letter from the Hawaii State Ethics Commission which states that their letter is based on information provided, and questioned whether the Board has the same information that was provided to the Hawaii State Ethics Commission, as he has no clue what was</p>	

SUBJECT	DISCUSSION	ACTION
	<p>provided to them. Chair Tudela replied that the Board does indeed have the information which will be discussed among the Board in Executive Session. She explained that because the question involves labor negotiations as well as Human Resource advice, it will need to be discussed in Executive Session so the Board may consult with their counsel for legal advice. Chair Tudela listed for Mr. Wilson the information and documents the Board has received regarding this request. (On file) She feels comfortable that she has enough information to deliberate and come to a decision.</p> <p>Mr. Wilson asked whether the County of Kauai Board of Ethics would be looking at any other similar cases outside of Kauai, or will outside cases have no bearing on their decision? Chair Tudela stated the Board's role is not to do any legal interpretation on any other cases, but rather to make a decision on questions specifically directed to the Board in the request for Advisory Opinion as it relates to the County of Kauai.</p> <p>Mr. Wilson added that he has been with the Kauai Fire Department for almost 30 years, and for at least the past 20 years there has been no real dress code regarding the wearing of hats. In the last 15 years or so, he has worn a baseball cap while on duty that bears the HFFA logo, and it has never been an issue. He feels the wearing of the union logo shows how the firefighters are in unison with their union; he does not see how having a union patch on a uniform is ethically wrong. He mentioned again that he has reviewed court cases, and has found nothing in the State of Hawaii of similar circumstances, which is why he had to reference court cases outside of Hawaii. Mr. Wilson referenced a case in Sacramento where employees were wearing union patches and were asked to remove them.</p> <p>Mr. Wilson asked whether the decision made by the Kauai Ethics Board will be the final decision; what will happen after they decide. Chair Tudela</p>	

SUBJECT	DISCUSSION	ACTION
	<p>explained that the Kauai Board of Ethics is only responding the request made by the Department of Human Resources for an advisory opinion, and does not know what will happen beyond that.</p> <p>Mr. Nagano asked why this is such a major issue in the bargaining unit negotiations. Chair Tudela consulted Deputy County Attorney Matthew Bracken to determine whether that was something that could be discussed in open session being that it relates to bargaining unit arbitration. Attorney Bracken replied that he does not see any problem in responding to the question. Mr. Wilson stated he feels it has to do with pride, and because it is being done in other jurisdictions outside of the State of Hawaii, they felt it would be good to do here; he is a little flabbergasted that it became such an issue. He reiterated that it has to do with pride and showing solidarity.</p> <p>Mr. Wilson provided an example of the Kauai Hospice event that is put on every year that is often credited to the Kauai Fire Department; however, the firefighters union puts it on. The union does not have a problem with that because they feel they are one in the same, and support each other which is the message they are trying to get across.</p> <p>Ms. Tabura asked to clarify whether all the firefighters wear baseball caps with the union logo on it to which Mr. Wilson replied some do, not all. Sometimes they wear caps with other types of logos. Ms. Tabura asked whether all firefighters wear pins or other indicators that they belong to HFFA on their uniforms to which Mr. Wilson replied it is a matter of choice; some do, others don't.</p> <p>County Attorney Mauna Kea Trask was present on behalf of petitioner Janine Rapozo, Director of Human Resources. Attorney Trask thanked the members for participating in this special meeting, acknowledging and</p>	

SUBJECT	DISCUSSION	ACTION
	<p>apologizing for the last minute request. Attorney Trask stated for edification the request for advisory opinion covers a simple, brief recitation of the facts up until this point. He explained that the employer group which is comprised of the State of Hawaii and all the counties within, are currently involved in arbitration over various proposals, one of which is Section 47, which is included in the petition. He stated for the record that the Board has received Section 47 of the HFFA Bargaining Unit 11 proposal. (Exhibit A)</p> <p>Attorney Trask further explained that upon receipt of the union proposals, the State felt there may be a fair treatment issue under Hawaii Revised Statutes 84-13; the letter referenced by Mr. Wilson was included in the request to the Board. (Exhibit B). For clarity and ease of reference, Attorney Trask noted Exhibit C contains the State's Fair Treatment law (HRS 84-13) along with the case notes, which he will discuss further. Also included in the request to the Board is Exhibit D, which is copy of the Kauai County Code Section 3-1.6, which is a mirror image of the State's fair treatment law.</p> <p>Attorney Trask pointed out that though this is relating to occurring arbitration, it is regarding whether this proposal is wise or legal, or who will pay for it; this is an ethical issue. Referencing Mr. Murashige's question on whether there is any other Hawaii court cases that supports this proposition, Attorney Trask stated that Mr. Spiker was correct in saying no; there is no case regarding the prohibition of allowance of union logos on government uniforms. He pointed out though, that it is important to note that <i>government</i> uniforms is an important distinction to make. He added that Mr. Wilson wears a union hat at work, and no one takes issue with it, but pointed out that the hat is not a county governmental-paid-for public uniform; that is a separate issue. Attorney Trask stated that Mr. Spiker is also correct in stating that SHOPO does not put union logo on police</p>	

SUBJECT	DISCUSSION	ACTION
	<p>uniforms, and HGEA and UPW do not put union logos on employee uniforms; HFFA is not being excluded, and are being treated like everyone else.</p> <p>Regarding the extra-jurisdictional court cases referenced by Mr. Spiker, Attorney Trask stated he went ahead and pulled up those cases. He explained that in the Sacramento case, the members did pay for the union logo, noting they are given a uniform allowance per their contract.</p> <p>Attorney Trask disagreed with the characterization of the U.S. Supreme Court case involving the National Labor Relations Board, noting that in that case, the members did not pay as there were no union members. The first point he made was that this case involved private companies that do have public governmental ethics rules or ethics boards. That case dealt with two separate companies with similar issues, one of which was the Republic Aviation Corporation, who was ordered to cease and desist from discouraging membership in a union, and directing reinstatement of discharged employees. In that case there was no union that was affiliated or bargained with the Republic Aviation Corporation. Employees were trying to form a union and were walking around wearing union pins. The company had an anti-solicitation policy which is what was used to prohibit the forming of a union organization. He restated for clarification that this was not an issue of union members wearing union logos, but rather private citizens trying to form a union that a private company was trying to discourage using a very broad anti-solicitation policy; this case has nothing to do with the issue before this Board.</p> <p>Attorney Trask referenced Page 2 of the written testimony provided by Mr. Spiker that states in Republic Aviation Corporation the Supreme Court of the United States held that “the right of employees to wear union insignia at</p>	

SUBJECT	DISCUSSION	ACTION
	<p>work has long been recognized as a reasonable, and legitimate form of union activity”. Attorney Trask pointed out that particular quote is not found anywhere in the body of the case, but is rather a small section taken from a larger quote in footnote 7 that includes the statement by the Supreme Court: “we do not believe that the wearing of a steward button is a representation that the employer either approves or recognizes the union as the representative of the employees...”. It goes on to say “on the other hand, the right to wear union insignia at work has long been recognized as a reasonable, and legitimate form of union activity. Attorney Trask wished to clarify that Mr. Spiker’s quote is taken out of context and is not contained within the body of the case. Attorney Trask further added that it was really a due process, substantive procedural issue as to whether or not people who wanted to form a union could wear union logos while at work at a private company; it was not an ethical question of wearing union insignia at work.</p> <p>Attorney Trask referenced the California Public Relations Board decision, and made a few distinctions on the decision, noting the question in that case involved the County of Sacramento interfering with the employees’ rights guaranteed by the Meyers Miliias Brown Act in violation of Sections 3506, 3506.5(a), and denied Local 552 it’s right to represent employees in violation of 3503, and 3506.5(b). He explained that Meyers Miliias Brown is a California State statute, a California law that does not exist in Hawaii. Attorney Trask further defined this case by explaining that the County of Sacramento has an Aircraft Rescue Fire division, which is exclusively represented by Local 552. In Sacramento, other municipal fire departments serving the airport are Metro Fire Department, and the Sacramento City Fire Department. Those two fire departments had policies allowing for the display of union insignia on their uniforms, and at a later time when the Aircraft Rescue Fire division agreed to be represented by Local 552, there was an informal understanding and practice of allowing members to wear</p>	

SUBJECT	DISCUSSION	ACTION
	<p>their insignia on uniforms. At one point a fire chief disallowed that, and a complaint was made that his action violated the Meyer Miliias Brown Act, which is what this case relates to. Attorney Trask argued that both of this cases are not applicable, and does not address the Ethics question that is before the Board.</p> <p>Attorney Trask stated for clarification that Ms. Rapozo's request is not meant to be adversarial. She only wishes to determine whether the Board feels HFFA's request is ethical or not before they move forward with the negotiation process.</p> <p>In response to Mr. Murashige's question on whether there are any Hawaii cases that support the position of HFFA, which Mr. Spiker correctly answered no, Attorney Trask referenced Exhibit B, which includes HRS 84-13 Fair treatment, noting that it does reference a Hawaii State Supreme Court case involving HGEA, and the Hawaii Labor Relations Board. He provided a brief overview of this case explaining that the union representing the government employees filed a prohibitive practice complaint after a union representative was asked to remove materials endorsing candidates for public office from a State bulletin board assigned for union notices. Following a hearing the Hawaii Labor Relations Board dismissed the complaint on union appeal. The Supreme Court held the following relevant part: The State Ethics Code ban preventing union from posting campaign materials on bulletin board did not violate the statutory right of the union to engage in mutual aid or protection, and furthermore the State ethics ban on posting campaign materials was not preempted by collective bargaining statute. Attorney Trask feels the gravamen of this case, which is Hawaii Supreme Court Law, Hawaii State Law says that ethics is its own question.</p> <p>Attorney Trask concluded by saying that Mr. Spiker says this is about a</p>	

SUBJECT	DISCUSSION	ACTION
	<p>symbol, a U.S. Patented symbol for the union, a patch for a private organization. According to Mr. Wilson, it is about pride. Attorney Trask stated it is important to note that it is about the union's logo, stating that Article 13, Section 2 of the Hawaii State Constitution says public employees have the right to collectively bargain, and he is not here to say they don't. This issue is about ethics relating to a public employer; the private employers have no relevance to this. The question is not whether they can wear the union logos on their hats, other employees wear surf logos on their hats; that is not a problem. The question is whether it is allowable for public employers with public money pay for the affixing of a private organization's logo; that is clearly an ethics questions.</p> <p>Attorney Trask also noted that Mr. Wilson stated that HFFA puts on the annual Kauai Hospice event with assistance from the Fire Department, and stated that the Kauai Hospice is a non-profit organization that provides a very important service. However, this Board has made past rulings prohibiting County officers who sit on private organization boards from appearing before the County as a member since they are now wearing two hats.</p> <p>Attorney Trask stated that Ms. Rapozo's question as the HR Director is that if this gets approved, all the other unions will follow. It may get to a point of the HR Department and the Board of Ethics having to determine which patches are and are not allowed, and it may be questioned that if the union can affix their patch to government-paid uniforms, why can't another organization such as the Humane Society affix their patch. It appears, per the reasoning of the State Ethics Commission, that it would be endorsing with public money on public property, and would be a violation of Fair Treatment. However, it will ultimately be the Board's decision to make.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Tudela stated the Board was now preparing to enter into executive session. Attorney Bracken noted that because there is no specific person being discussed, the Board does not need to go into executive session to discuss this item unless they have specific questions for counsel. Chair Tudela stated she does have some questions for counsel.</p> <p>Mr. Spiker provided additional testimony to clarify his point, stating that a Honolulu Police Department vehicle that he came across had a Ford emblem affixed to it. He noted that this is a Honolulu Police Department vehicle that was paid for by the City and County that has a private company's logo affixed to it. He feels this is analogous to what is before the Board today. The reason being that he feels HFFA's affixing of the logo does not represent an endorsement by the County or the State, but rather the strength and power by which the union was formed.</p> <p>Chair Tudela felt Mr. Spiker was attempting to present a legal interpretation of something different, and pointed out that the specific question from Human Resources is whether HFFA's request is in breach of the specifically referenced regulations and laws.</p> <p>Attorney Trask provided a response to Mr. Spiker's statement regarding police vehicles, noting that a subsidized vehicle falls under procurement laws.</p>	
Executive Session		Deputy County Attorney Matthew Bracken read the Hawaii Revised Statutes provision as detailed on the agenda to take the Board into Executive Session for ROA 17-003 to consult with the Board's legal counsel on a request for advisory opinion on a revision to Section 47 of the HFFA collective bargaining agreement.

SUBJECT	DISCUSSION	ACTION
		<p>Mr. de la Pena moved to enter into executive session. Mr. Murashige seconded the motion. Motion carried 7:0.</p>
<p>Return to Open Session</p>	<p>Chair Tudela reminded the Board that any discussion they have on this item will now be documented in the minutes, which will be public record.</p> <p>Ms. Tabura stated for clarification that the County pays for and therefore owns the uniforms and HFFA, which is a private organization, is wanting to put their logo on the County uniform. She questioned what would happen if another company or organization wanted to do the same; would they keep adding patches and logos? She also pointed out that, currently, the firefighters are allowed to wear caps and other items with the HFFA logo on it. Mr. de la Pena pointed out that those other items are not paid for by the County with which Ms. Tabura agreed.</p> <p>Chair Tudela referenced Page 2 of the opinion provided by the Hawaii State Ethics Commission, specifically the paragraph stating that placing a union emblem on a state uniform or helmet gives HFFA unfair advantage over existing or similar organizations. She stated that to her knowledge there are no other firefighters' unions in Hawaii, so she does not see that being an issue. She stated that she sees it as a "branding" issue, noting the logo belongs to HFFA which is a private organization, but the uniforms are paid for by the County which is a public entity.</p> <p>Mr. Murashige stated that he doesn't think it needs to be taken that far, and clarified that his motion is simply to consider HFFA's request a violation of the Code of Ethics.</p>	<p>The meeting resumed in open session at 1:58 p.m.</p> <p>Mr. Murashige moved that HFFA's proposal goes against Hawaii Revised Statutes Section 84-13 Fair Treatment and would be a violation of the County of Kauai's Code of Ethics. Mr. Nagano seconded the motion. Motion carried 7:0</p>

SUBJECT	DISCUSSION	ACTION
Announcements	Next Meeting: Friday, February 17, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room	
Adjournment		Mr. Curtis moved to adjourn the meeting. Mr. Murashige seconded the motion. Motion carried 7:0.

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Mary Tudela, Chair

(x) Approved as circulated. 2/17/17

() Approved with amendments. See minutes of _____ meeting.